

Albany Water Board

Policy for Use of Executive Session

Purpose

The Albany Water Board's (AWB") objective is to conduct business in an environment that fosters transparency and public disclosure, and conforms to the intent of the Public Authorities Accountability Act and the Public Officers Law.

Therefore, AWB meetings are open to the general public, except when it is appropriate to enter into executive session. The term "executive session" refers to that portion of a public meeting during which the public may be excluded. ***The law is clear that a public body may go into executive session only for specific and limited reasons.*** Upon a majority vote of the AWB's total membership, taken in the open meeting, pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, the AWB can then enter into an executive session.

Procedure

The AWB will provide sufficient details on the purpose of the executive session to assure the public that the subject matter meets the statutory test for executive session. When the AWB does vote to go into executive session, the motion must include a clear explanation of what will be discussed. The AWB members are automatically authorized to be present and may invite any member of the public body and any other person(s) if authorized in the motion that is made to go into executive session.

The AWB may conduct an executive session only for the purposes enumerated below:

- A. Matters which will imperil the public safety if disclosed;
- B. Any matter which may disclose the identity of a law enforcement agent or informer;
- C. Information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
- D. Discussions regarding proposed, pending or current litigation;
- E. Collective negotiations pursuant to article fourteen of the civil service law;
- F. The medical, financial, credit or employment history of a particular person or corporation;
- G. Matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
- H. The preparation, grading or administration of examinations;
- I. The proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

At no time can the AWB vote to appropriate public moneys while in executive session.

Minutes of the executive session will be recorded if any action is taken by formal vote. The minutes serve as the record of the determination of the AWB. The date and results of that vote must be recorded and any information that otherwise would be allowed to be withheld under the *Freedom of Information Law*. AWB meeting minutes will be available to the public in accordance with the provisions

of the Freedom of Information Law within two weeks from the date of such meeting, ***except that minutes taken in executive session will be available to the public within one week of the date of the executive session.***

An executive session can only be convened to discuss a finding that is consistent with the exceptions articulated in Public Officers Law. The AWB **may not** conduct an executive session for the purposes enumerated below:

- ✓ A motion that states the board is going into executive session to discuss “personnel” issues is not sufficient.
- ✓ If the internal auditor appears before the audit committee or the full board to present his or her findings that discussion must occur in an open meeting, since the committee and the board are public bodies.
- ✓ A discussion of the audit findings or a discussion concerning management’s cooperation with the auditor (either internal or independent) is not an acceptable justification for adjourning to executive session.
- ✓ The presentation of the annual independent audit to the audit committee and any general discussion of its findings with the committee or the board must be done in a public meeting.
(Reminder: The independent audit report is a public document)
- ✓ Discussing the merits of selling a piece of property through public bid, or concern about revealing the fair market value of the property, is insufficient justification to adjourn to executive session.
- ✓ The board may not hold an executive session out of concern that a matter raised in public session may provoke a lawsuit, or fear of the threat of potential legal action.

It is appropriate that the details of sensitive or confidential issues be presented to management, rather than to the board.

Invoking the use of executive session without providing sufficient justification may undermine the public’s confidence in the decisions and actions of the board. This is why the AWB will only use executive session when appropriate and with a clear descriptive motion.

When the AWB makes the motion to convene an executive session, the board must be more expansive than “to discuss litigation” or “for personnel matters”. It is practice that the record will specifically state the purpose, such as “to discuss litigation issues in the case of XYZ Company vs. AWB” or “the employment history of an employee”, or “potential disciplinary action against an employee”. In personnel matters, **it is not necessary to identify the individual who is the subject of the executive session.**

Finally, there may be occasions when litigation warrants a vote for the AWB to convene an executive session. This is limited for when a discussion by the board of its legal strategy in litigation involving the board or pending before it is taking place.

If any member of the AWB or member of the public is unclear on this matter or has any additional questions consult the Committee on Open Government. The Committee may be contacted at (518) 474-2518 or by fax at (518) 474-1927. Its web site address is: www.dos.state.ny.us/coog/.

Adopted by the Albany Water Board as of: August 28, 2015

Resolution: 15-26